TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 142.

THE UNITED STATES, APPELLANT,

vs.

EVETT D. NIX.

No. 195.

EVETT D. NIX, APPELLANT,

vs.

THE UNITED STATES.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 142.

THE UNITED STATES, APPELLANT,

vs.

EVETT D. NIX.

FILED JULY 25, 1901.

No. 195.

EVETT D. NIX, APPELLANT,

vs.

THE UNITED STATES.

FILED NOVEMBER 23, 1901.

APPEALS FROM THE COURT OF CLAIMS.

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27762—02

1 Court of Claims.

EVETT D. NIX
vs.
UNITED STATES. } No. 20756½.

I.—*Petition and amended petition.*

An original petition of Evett D. Nix was filed April 3, 1897, and numbered on the docket 20756.

Subsequently, to wit, on January 28, 1901, the attorney for the claimant filed the following motion to sever the cause of action, to wit:

"Now comes the claimant by his attorney and moves the court for permission to sever the cause of action in the above-entitled case, and to file two separate petitions: One to cover all items not contested by counsel for the Government; the other to cover the items contested by counsel for the Government; the report of the auditor appointed by the court in this cause showing the items contested and those not contested.

"F. B. CROSTHWAITE,
"*Attorney for Claimant.*"

This motion was allowed by the court January 28, 1901, and thereupon claimant, by his attorney, filed his amended petition covering the items contested by counsel for the Government, which is as follows:

2 EVETT D. NIX
vs.
THE UNITED STATES. } #20756½.

Amended petition.—Filed January 31, 1901.

To the honorable the Chief Justice and Judges of the Court of Claims:

Your petitioner, Evett D. Nix, a citizen of the United States, residing at Guthrie, in the Territory of Oklahoma, respectfully represents:

I.

That from July 1, 1893, to February 24, 1896, he was the United States marshal for the district of Oklahoma, duly appointed, qualified, and acting.

II.

That during said period petitioner, as such marshal, performed services, incurred and paid expenses, and made disbursements for and in behalf of the United States, and his accounts therefor, duly verified by his oath, were submitted to the United States court for approval, in the presence of the district attorney, as required by law, and the court approved the same as just and in accordance with law, and the orders of approval were duly entered of record.

III.

Petitioner's said accounts, so approved, were presented to the accounting officers of the Treasury for allowance and payment; part thereof was allowed and paid, but the items set forth in Exhibit A, herewith

attached, amounting to $5,434.95, were disallowed by the account-
3 ing officers and payment of the same was refused, and no part thereof has been paid to your petitioner, or to any one for him.

IV.

No other action than as aforesaid has been had on this claim in Congress or by any Department of the Government.

The petitioner is the sole owner of this claim and the only person interested therein, and no assignment or transfer thereof or of any part or interest therein has been made.

The petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs, and he believes the facts as stated in his petition to be true.

Wherefore your petitioner prays judgment against the United States for $5,434.95.

EVITT D. NIX,
Petitioner.
F. B. CROSTHWAITE,
Attorney.

EXHIBIT A.

The United States, Dr., to E. D. Nix, late United States marshal for the Territory of Oklahoma, for services performed, expenses incurred and paid, for and in behalf of the United States, from July 1st, 1893, to February 24th, 1896.

FEES AND EXPENSES.

Services performed and expenses paid.

Item 2, $69.18.

1,153 miles, going only to serve warrants of arrest, at $0.06.	$69.18

Item 10, $100.00.

4 Per diems for attendance on court, 20 days, at $5.00.	$100.00

Item 12, $5,135.50.

All charges for transportation of deputies, prisoners, and guards in 218 different cases, disallowed because the prisoners were taken before the commissioner whose office was nearest the place where the crime was committed instead of the commissioner nearest the place of arrest, 50,355 miles, at 10 cts	$5,135.50

Item 16, $39.77.

All charges for service of capias and transportation of deputy, prisoner, and guard	$39.77

Item 24, $90.50.

Actual expense for transporting deputy, prisoner, and guard from Springfield, Ohio. to Kings County penitentiary, at Brooklyn, N. Y	$90.50
Total	$5,434.95

F. B. CROSTHWAITE,
For Claimant.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, on this 1st day of February, 1901, F. B. Crosthwaite, who on oath said that he is the attorney for the petitioner, and is authorized by warrant of attorney to verify the foregoing amended petition; that he has read the foregoing petition, and the facts therein stated are true to the best of his knowledge and belief.

[SEAL.] EDWARD F. COLLADAY,
Commissioner of the Court of Claims.

5 *Traverse of amended petition.—Filed Jan'y 31, 1901.*

EVETT D. NIX
vs.
UNITED STATES. } No. 20756½.

And now comes the Attorney-General on behalf of the United States, and, answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the said amended petition be dismissed.

L. A. PRADT,
Assistant Atty. General.

6 *Findings of fact and conclusion of law.—Filed June 3, 1901.*

EVETT D. NIX
v.
THE UNITED STATES. }

This case having been heard by the Court of Claims, the court, upon the evidence and the report of the auditor, makes the following

FINDINGS OF FACT.

I.

The claimant, Evett D. Nix, was United States marshal for the district of Oklahoma from July 1, 1893, to February 24, 1896, duly appointed, qualified, and acting.

II.

During said period the claimant, as such marshal, by his deputies, performed services and travel and incurred expenses in behalf of the United States, and his accounts therefor, verified by his oath and approved by the court in accordance with the law, were finally acted upon by the accounting officers of the Treasury Department, and part thereof was allowed and paid, but a part thereof, as more specifically set forth in Finding III, was disallowed, and no portion thereof has been paid to the claimant.

III.

Item 2. To travel, 1,153 miles in going to serve warrants of arrest, at six cents per mile, $69.18, being for travel in excess of the distance from the

place of arrest to the place of receiving writs. The travel charged for was in a new and unsettled Indian country, without post-offices,
7 post routes, or section lines. The defendants were moving about from place to place to avoid arrest, and it was necessary to travel a circuitous route. The deputies had to find fordable places to cross the river to locate the defendants, there being no bridges. After arrest the defendants were taken by the most direct routes to commissioners for examination.

Item 10. For attendance of the marshal at court, by deputy, for twenty days, at $5 per day, $100.00.

It does not appear whether business was transacted in the court on said days although the court was opened for business by order of the judge. It does not appear that the judge was present at court on any of these days.

Item 12. For transportation of prisoners (deputy and prisoner or deputy, prisoner, and guard) in bringing them from the several places of arrest for a hearing before United States commissioners whose offices were nearest the places where the crimes were committed by the prisoners instead of bringing the prisoners before the commissioners whose offices were nearest to the places of arrest, $1,143.30.

Item 16. For service of a capias and transportation (mileage) of a deputy, prisoner, and guard. The capias was issued by the clerk of the U. S. district court at Topeka, Kansas, on an indictment found by the grand jury at Topeka. The capias was received by the claimant in Oklahoma City and was executed by arresting the prisoner named in the capias who was transported to the U. S. district court at Wichita, Kansas.

The claimant charged six cents a mile for going sixty-two miles, from Oklahoma City to Perry, to serve the writ, $2.00 for the service of the writ, and ten cents per mile each for the deputy, prisoner, and guard for 111 miles, $33.30, from Perry, Oklahoma, to Witchita, Kansas, and one meal for the prisoner, 75 cents, making a total of $39.77.

8 Item 24. For actual expenses for transporting a prisoner from Springfield, Ohio, to the penitentiary at Brooklyn, New York, under a warrant of commitment. The warrant of commitment was issued at Oklahoma and the marshal transported the prisoner on that warrant to Springfield, Ohio, where the prisoner was temporarily detained as a witness for the United States in a counterfeiting case. The prisoner having been discharged as a witness in that case at Springfield the marshal continued his transportation from Springfield to New York City on the original warrant of commitment. The prisoner, with a deputy and guard, arrived in New York City too late for the prisoner to be received at the Brooklyn penitentiary on the day of arrival in New York and he escaped from the custody of the deputy on the night of the same day while they were going to supper in the hotel where they were stopping. The marshal made every effort to retake the prisoner and failed, $90.50.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment of and from the United States

in the sum of one hundred and eight dollars and ninety-five cents ($108.95) on items 2 and 16 of Finding III.

All other items disallowed.

BY THE COURT.

9 *Judgment of the court.*

EVETT D. NIX
vs.
THE UNITED STATES. } No. 20756½.

At a Court of Claims held in the city of Washington on the 3d day of June, 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order, adjudge, and decree that the claimant, Evett D. Nix, do have and recover of and from the United States the sum of one hundred and eight dollars and ninety-five cents ($108\frac{95}{100}$).

BY THE COURT.

10 *Application of claimant for and allowance of appeal.*

EVETT D. NIX
vs.
UNITED STATES. } No. 20756½.

From the judgment rendered in the above-entitled cause on the third day of June, 1901, the claimant, by his attorney of record, on the 10th day of June, 1901, makes application for and gives notice of an appeal to the Supreme Court of the United States.

F. B. CROSTHWAITE,
Attorney for Claimant.

Filed June 10, 1901.
Allowed.

C. C. NOTT,
Chief Justice.

11 *Application of defendants for and allowance of appeal.*

EVETT D. NIX
v.
UNITED STATES. } No. 20756½.

From the judgment rendered in the above-entitled cause on the 3d day of June, 1901, in favor of the claimant, the defendants, by their Attorney-General, on the 27th day of June, 1901, make application for and give notice of an appeal to the Supreme Court of the United States.

LEWIS A. PRADT,
Assistant Atty. General.

Filed June 27, 1901.
Allowed.

C. C. NOTT,
Chief Justice.

12 In the Court of Claims.

EVETT D. NIX
vs.
UNITED STATES. } No. 20756½.

I certify that the foregoing are true transcripts of the pleadings in the above-entitled cause of the findings of fact and conclusion of law, of the judgment of the court, of the application of the claimant and also of the defendant for the allowance of appeal to the Supreme Court of the United States, and of the allowance of same by Chief Justice Nott.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 16th day of July, A. D. 1901.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

(Indorsement on cover:) File No., 18235. Court of Claims. Term No., 142. The United States vs. Appellant, Evett D. Nix. Filed July 25, 1901, and file No., 18326. Term No., 195. Evett D. Nix vs. Appellant, The United States. Filed November 23rd, 1901. Office Supreme Court of U. S. Received July 24, 1901.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 142,

THE UNITED STATES, APPELLANT,

vs.

EVETT D. NIX,

and

No. 195,

EVETT D. NIX, APPELLANT,

vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

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1 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the judges of the Court of Claims, greeting:

Whereas in a certain suit in said Court of Claims between Evett D. Nix, claimant, and the United States, defendant, which suit was removed to the Supreme Court of the United States, by virtue of an appeal and cross-appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"The claimant's request for findings of fact, of record in the Court of Claims, is omitted from the transcript."

You, therefore, are hereby commanded that, searching the record
2 and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find, to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of November, A. D. 1902.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

3 (Indorsed:) Court of Claims. Let the claimant's request for findings of fact be certified to the Supreme Court in compliance with the within mandate. Charles C. Nott, chief justice. November 19, 1902.

4 In the United States Court of Claims.

EVETT D. NIX,
vs.
THE UNITED STATES. } No. 20756–1/2.

CLAIMANT'S REQUEST FOR FINDINGS OF FACT.

(Filed January 31, 1901. J. R.)

The claimant, considering the facts hereinafter set forth as proved and deeming them material to the due presentation of this case in the findings of fact, requests the court to find the same as follows:

I.

The claimant, Evett D. Nix, was United States marshal for the district of Oklahoma from July 1, 1893, to February 24, 1896, duly appointed, qualified, and acting.

II.

That during said period the claimant, as such marshal, by his deputies, performed services and travel and incurred expenses in behalf of the United States, and his accounts therefor, verified by his oath and approved by the court, in accordance with the law, were finally acted upon by the accounting officers of the Treasury Department, and part thereof were

allowed and paid, but part thereof, as more specifically set forth in Finding III, amounting to $5,434.95, were disallowed, and no part thereof has been paid to the claimant.

5 III.

The items so disallowed by the accounting officers are as follows:

ITEM 2.

1,153 miles' travel, going only to serve warrants of arrest, at 6 cents per mile..... $69.18

The claimant charged in his accounts the 6 cents per mile for going to serve a warrant of arrest, and computed the distance from the place where the warrant was received to the place where the arrest was made, and, in each instance, the distance was greater than from the place of arrest to the place where the writ was returned, on which grounds the accounting officers disallowed the charges. The claimant found it necessary to make circuitous routes, as the defendants for whom he had warrants of arrest were moving from place to place to avoid arrest, and in other cases involved under this item the deputies had to find fordable places to cross the rivers, there being no bridges. The travel charged for was actually and necessarily performed.

ITEM 10.

Per diems for attendance on court, 20 days, at $5.00 per day.. 100.00

The claimant charged in his accounts for attendance by a deputy on court on each of 20 days, at $5 per day. A certificate from the deputy and from the clerk of the
6 court was filed with the claimant's accounts, showing that the court was actually opened for business on the dates specified by order of the court, and that the deputy for whom the charges were made and the bailiffs of the court were in attendance on the dates charged for.

The accounting officers disallowed the charges on the ground that there was no business transacted in the court on the days charged for.

ITEM 12.

All charges for transportation of deputies, prisoners, and guards in 218 different cases..... 5,135.50

The claimant transported prisoners and guards, in 218 different cases, a total of 51,355 miles, and charged 10 cents per mile for the transportation.

After the claimant made the arrests the prisoners were taken to the United States commissioner whose office was nearest to the place where the crime was committed.

The accounting officers disallowed these charges on the ground that the prisoners should have been taken before the United States commissioner nearest the place where the arrest was made.

The claimant took the prisoners before the commissioner

nearest the place where the crime was committed, pursuant to the provisions of the act of Congress entitled "An act to provide a temporary government for the Territory of Oklahoma, approved May the 2nd, 1890 (26 Stats. at Large, 87, sec.
7 10), which reads as follows: "Persons charged with any offense or crime in the Territory of Oklahoma, and for whose arrest a warrant has been issued, may be arrested by the United States marshal or any of his deputies, wherever found in said Territory, but in all such cases the accused shall be taken for preliminary examination before a United States commissioner or a justice of the peace whose office is nearest to the place where the offense or crime was committed.

"All offenses committed in said Territory, if committed within an organized county, shall be prosecuted and tried within said county * * *."

An action was brought in the district court for the Territory of Oklahoma to quash the information in a case where the defendant was taken to the commissioner nearest the place where the arrest was made, and the court, in its decision quashing the information in effect, held that the provisions of the said act approved May 2nd, 1890, were in force in Oklahoma, and that the defendant should have been taken to the commissioner whose office was nearest the place where the crime was committed.

The accounting officers disallowed the items under the provisions of the act of August 18th, 1894, which provides "that it shall be the duty of the marshal, his deputy, or other officer who may arrest a person charged with any crime or offense to take the defendant before the nearest circuit court
8 commissioner, or the nearest judicial officer having jurisdiction under existing laws, for a hearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint * * *, and no mileage shall be allowed any officer violating the provisions hereof." (28 Stats. at Large, p. 416.) The prisoners were actually transported as charged, and the services of the guards which were used were necessary.

ITEM 16.

All charges for service of a capias and transportation of a deputy, prisoner, and guard..... $39.77

The claimant charged in his accounts 6 cents a mile for going 62 miles to serve the writ, $2.00 for the service of the writ, and 10 cents per mile for each of the deputy, prisoner, and guard for 111 miles, $33.30, and one meal for the prisoner, 75 cents, making a total of $39.77.

These charges were made for services performed upon a capias issued by the clerk of the district court at Topeka, Kansas, on an indictment found by the grand jury at Topeka, Kansas, and received by the claimant in Oklahoma City and executed by arresting the person named in the capias, who was transported to the United States court in Kansas.

The accounting officers disallowed the charges because
9 the capias was not approved by the judge of the court.

ITEM 24.

Actual expenses incurred in transporting a deputy, one prisoner, and one guard from Springfield, Ohio, to Brooklyn, New York $90.50

The claimant was transporting a prisoner from Guthrie, Oklahoma, to the Kings County penitentiary, at Brooklyn, New York, under sentence of the court. Previous to starting on the trip the claimant received a subpœna for the prisoner to give testimony on behalf of the Government, in a counterfeiting case before a United States commissioner at Springfield, Ohio, to which place the claimant transported the prisoner.

After the prisoner's testimony had been taken he was transported from Springfield, Ohio, to New York City, arriving there too late to be delivered to the penitentiary.

While the claimant was going into the dining room with the prisoner for supper he escaped through a side door of the hotel, and the claimant could not recapture him after diligent efforts.

All of the expense items are covered by vouchers on file at the Department.

The accounting officers disallowed these charges because the prisoner escaped and was not delivered to the penitentiary.

Total 5,434.95

10 CONCLUSION OF LAW.

Upon the foregoing findings of fact, the court is asked to decide, as a conclusion of law, that the claimant, Evett D. Nix, is entitled to recover judgment against the United States in the sum of $5,434.95.

(Sgd.) F. B. CROSTHWAITE,
For Claimant.

Court of Claims.

EVETT D. NIX
v.
UNITED STATES. } No. 20756½.

I, John Randolph, assistant clerk Court of Claims, certify that the foregoing is a true and complete copy of the claimant's request for findings of fact in the above-entitled cause, filed January 31, 1901.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims this 20th day of November, A. D. 1902.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

11 Indorsed: File Nos. 18235, 18326, Supreme Court U.. S., October term, 1902. Term Nos. 142 and 195. U. S. vs. Nix, and Nix vs. U. S. Writ of certiorari and return. Filed Nov. 21, 1902.

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1 In the Court of Claims of the United States.

EVETT D. NIX
v.
THE UNITED STATES. } No. 20756½.

In obedience to the order of the Supreme Court of the United States, passed in the following cases, to wit: The United States, appellant, *v.* Evett D. Nix, and Evett D. Nix, appellant, *v.* United States, October term, 1902, and numbered on the dockets of said court as Nos. 142 and 195, it is, this 22nd day of January, 1903,

Ordered, that item 12, finding 3, be revised as follows:

This item was charged in claimant's accounts as transportation of prisoners, deputies, and guards from the several places of arrest, for hearing before the United States commissioners whose offices were nearest the places where the crimes for which the prisoners were arrested were committed. The number of miles charged in claimant's accounts for this travel was fifty-one thousand three hundred and fifty-five miles, at ten cents a mile, amounting to five thousand one hundred and thirty-five dollars and fifty cents.

Those accounts were submitted to the United States district court for Oklahoma under the provisions of the act of February 22, 1875, 18 Stats., 333, and the said accounts, including this item as above charged, were approved by that court. When the accounts so approved were submitted to the accounting officers, all the charges for travel included in that item were disallowed by them uuder the provisions of the sundry civil appropriation act of August 18, 1894, 28 Stats., 372–416, which made it the duty of the marshal to take the defendants before the
2 nearest circuit court commissioner or the nearest judicial officer having jurisdiction under existing laws, for a hearing, commitment, or taking bail for trial. Subsequently the accounting officers allowed and paid claimant, of this item, twenty-seven dollars.

After suit was brought in this court, the claimant's deposition was taken in respect to this item, and he proved that, of his own knowledge, eleven thousand four hundred and thirty-three miles were traveled in the transportation of said prisoners, deputies, and guards. As to the remainder of the travel, he could not testify of his own knowledge, because that travel had been performed by certain of his deputies who were not then in the Territory and who, he supposed, were in Alaska or the Philippine Islands. The depositions of those deputies were not taken. No other evidence was offered by the claimant to establish the number of miles actually traveled than the approval of the district court for Oklahoma and his own deposition subsequently taken, as above stated. If the approval of his account by said district court is competent evidence to establish the number of miles actually traveled, this court finds the ultimate fact that he traveled 51,355 miles. If such approval of the district court is incompetent to establish the number of miles actually traveled, this court finds that the number of miles so traveled was 11,433 in the transportation of prisoners, deputies, and guards, as before set forth.

3 Ordered this 22d day of January, 1903, that the foregoing revised findings of fact be certified and transmitted to the Supreme

Court of the United States pursuant to the order of that court made the 19th day of January, 1903.

By the court:

CHARLES C. NOTT,
Chief Justice.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsed:) File Nos. 18235 and 18236. Supreme Court U. S. October term, 1902. Term Nos., 142 and 195. The United States, appt., vs. Evett D. Nix, and Evett D. Nix, appt., vs. The United States. Revised finding of Court of Claims. Filed Jan. 23d, 1903.

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IN THE

Supreme Court of the United States.

October Term, 1902.

THE UNITED STATES, Appellant, *vs.* EVETT D. NIX.	No. 142.
EVETT D. NIX, Appellant, *vs.* THE UNITED STATES.	No. 195.

Comes now the said Evett D. Nix, by Frank B. Crosthwaite and Franklin H. Mackey, his counsel, and suggests diminution of the record in this cause, in this, to wit:

1. The Claimant's Request for Findings of Fact, of record in the Court of Claims, is omitted from the transcript.

Wherefore, the said Evett D. Nix moves the Court, under rule 14, to award a writ of *certiorari* to be issued

and directed to the judges of said Court of Claims, commanding that, searching the record and proceedings in said cause, they forthwith certify to this Court that part of the said record so omitted as aforesaid.

This motion is made for the reason that the Findings of the Court of Claims do not show the amount in controversy in this cause. The Claimant's Request for Findings of Fact in the Court below do, however, show the full amount in controversy. That is to say, they show that the claimant requested the Court below to find that his account of $5,434.95 was duly approved by the Territorial Court of Oklahoma. The Court, however, while finding that the account was duly approved, failed to state the amount which was thus approved. The claimant contends that the account so approved is *prima facie* evidence of the correctness of the items in the account, and in the absence of clear and unequivocal proof of mistake on the part of the Court is conclusive.

Jones *vs.* United States, 134th U. S., 483, 488.

It becomes important, therefore, to show the amount for which the account was approved by the Oklahoma court, and inasmuch as the amount for which the account was approved exceeds $5,000, that approval establishes the amount in controversy in this cause, and establishes the jurisdiction of this Court to hear the cause.

In the United States *vs.* Adams, 9th Wall., 661, the *writ of certiorari* was pointed out as the proper writ "to brig up to the court of error, on an allegation of diminu-

tion of out branches of the record or other documents, and writings in the court below, which have not been previously certified or sent."

F. B. CROSTHWAITE,
FRANKLIN H. MACKEY,
Of Counsel.

November 12, 1902.

I admit the matters of fact contained in the above motion, of which I hereby acknowledge service this 11th day of November, 1902.

L. A. PRATT,
Assistant Attorney General,
Of Counsel for Defense.